

July 29, 1983

CCMA ISSUE PAPER

NON-COMPETITIVE PROCUREMENT

The following information is for discussion at the CCMA Planning Meeting of August 2, 1983, now scheduled for 3:00 p.m. in the Roosevelt Room. In addition, a presentation will be made by the Office of Federal Procurement Policy (OFPP).

Background

At the CCMA meeting of January 21, 1983, OFPP proposed a policy letter to limit non-competitive procurement. Statistics showed that approximately one-third of FY 1981 procurement dollars were expended on a non-competitive basis, even after eliminating "follow-ons" to competitive procurements. OFPP estimates that an additional \$3-5 billion can be saved through more effective use of competitive procurement procedures. CCMA agreed that action on the proposed policy should be delayed for two months, to give DOD time to complete an analysis of non-competitive procurement which it had undertaken several months earlier.

Meanwhile, legislation has been introduced (H.R. 2545 and S.338) which, among other things, restricts the use of non-competitive procurements in the same manner as the proposed OFPP policy letter. Also, GSA has amended the Federal Procurement Regulations to require controls on non-competitive procurements similar to those originally proposed by the Administration in the Uniform Federal Procurement System (UFPS).

OFPP Recommendation

OFPP proposes that the Administration take additional steps to blunt increasing criticism by using this period to solicit public comment on a proposed government-wide policy on non-competitive procurement. They feel that such action would reflect the Administration's strong commitment to reform the procurement processes of the Federal Government.

OFPP is recommending that the attached policy letter be published in the Federal Register for a 60-day agency and public comment period.

Operating Recommendation

OFPP's proposed letter contains the following policy changes:

- Creates specific circumstances under which non-competitive procurement must be justified.
- Requires agency procurement executives to establish approval procedures for non-competitive procurement.

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- Requires special control procedures regarding non-competitive awards resulting from unsolicited proposals.
- Requires synopsisizing certain non-competitive procurement actions including the reason for non-competition.

Comparison to Legislation and GSA's FPR

The proposed OFPP policy letter is based on the GSA regulation and the two legislative proposals with the following differences:

H.R. 2545

The OFPP policy letter and H.R. 2545 contain similar circumstances permitting non-competitive procurement.

S. 338

The OFPP policy letter contains the same circumstances as S.338 plus those relating to unsolicited proposals, follow-on production, establishing or maintaining a competitive source, and where it is impractical to obtain competition.

Federal Procurement Regulation (as amended by GSA)

The OFPP policy letter does not contain the following circumstances for non-competitive procurement which are in the FPR: when data needed for competition are not available, standardization/interchangeability needs, and compatibility with existing equipment.

The OFPP policy does contain the following circumstances for non-competitive procurement that are not in the FPR: maintaining industrial capability, industrial mobilization, directed procurement by foreign governments, unsolicited proposals, establishing or maintaining a competitive source, and impracticality of obtaining competition.

Advantages of Publishing the Proposed Letter

- o Work would begin now toward potential dollar savings.
- o Experience would be gained by working with the circumstances (which are consistent with both bills). This could improve legislation if it is delayed.

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- o Administration would receive credit for the initiative.
- o Public comment would be obtained while DOD completes its study.

Disadvantages in Publishing the Proposed Letter

- o Could be some confusion with new FPR amendment, which will have to be changed because of the differences between it and the Policy Letter. (Civilian agencies only)
- o This may appear to be one of many initiatives (GAO, Congress, Task Group #3, DOD study) which would need to be revised again soon.
- o Synopsis provision could increase lead time for some procurements.

Coordination of Agency Comments

OFPP has circulated the proposed policy letter to all major agencies for comment. Revisions have been made to the extent practicable.